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In The
Supreme Court of the United States

JOSEPH SCHEIDLER, *ET AL.*,

Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., *ET AL.*,

Respondents.

OPERATION RESCUE,

Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., *ET AL.*,

Respondents.

On Writs of Certiorari To The United States Court of Appeals For The Seventh Circuit

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BRIEF OF EMILY LYONS AS *AMICA CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF THE AMICA CURIAE[1]

At 7:30 a.m. a bomb that had been placed in a potted plant outside the clinic I worked in exploded about 15 feet from where I was standing. Someone who considers himself pro-life murdered a police officer.

The pipe bomb contained dynamite and nails. I am often asked what my injuries were. I usually ask them, "How much time do you have?" I had first, second, and third degree burns. The trauma surgeon described it by saying that I had hundreds of wounds. He had served in Desert Storm and had seen others who had been bombed. He was shocked to see a bombing victim back in the United States.

Metal tore my left eye to the extent that it had to be removed. Metal also shot into my right eye. After several operations and months of waiting, I am able to see well enough to read a little, but my sight will never be like it was. My face, eye sockets, and teeth were broken, my left ear was ruptured, my right hand was mangled, a hole about the size of a fist was torn in my abdomen, exposing my intestines. Both knees were so full of nails that they had to be opened and the nails cleaned out before they would move again. The skin was torn off both shins, exposing bone and requiring skin grafts. Both bones in my

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[1] No counsel for any party had any role in authoring this brief, and no persons other than *amica curiae* and her counsel made any monetary contribution to its preparation and submission. Written consents from the parties to the filing of *amicus* briefs in this case are on file with the Clerk of the Court.

lower left leg were shattered, and the doctors feared amputation of one leg. I had dozens of complete nails inside my body, and hundreds of metal fragments and other debris. The blast was so strong it shredded my clothing and blew my shoes off.

I have had 12 operations this year and expect many more next year. As a result, I am a trained nurse with 20 years experience who cannot write, read or stand for long periods of time.[2]

Emily Lyons, the author of these words, has an interest in seeing that terrorists like Eric Rudolph, who planted the 1998 Birmingham bomb that so gravely injured her, are vigorously prosecuted, including under federal statutes. As a survivor of that bombing who can no longer work as a nurse, she is deeply troubled by Petitioners' attempts to cloak violence in the garb of protected expression.

Emily Lyons simply reported to work at the women's clinic where she had served for four years, New Woman/All Women, on January 29, 1998. No one asked her if she consented to trade her eyesight or physical vitality for the privilege. Having endured the horror of that day and the horror of repeated surgeries to return to her a fraction of her former body and life before that day, she retains the courage and the belief in the rule of law to caution her fellow citizens: "Do not allow anyone or anything, be it fear or intimidation, to make you lose sight

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[2] This speech, "To Hell and Back," was given by Emily Lyons in 1998. Emily Lyons has now had 21 surgeries.

of the main goal–to provide and support a woman's right to reproductive health as they see fit." *Id.*

SUMMARY OF ARGUMENT

This case is not a judicial plebiscite on the right to peaceful protest activities, although Petitioners labor mightily to transform it into one.

Contrary to Petitioners' suggestion, bombs, blockades and blitzes of women's health clinics share no kinship with protected forms of nonviolent expression epitomized by the civil rights sit-ins that are seared into our nation's conscience. Nor do they have anything in common with political protestors of any stripe accorded First Amendment protection. Those who plant bombs or use clubs, fists, violent blockades, or nefarious means to express their dissent from this Court's substantive due process jurisprudence are criminals who should be punished as criminals, however sincere their religious or political convictions. Architects and purveyors of violence, whether to the degree Emily Lyons suffered or to the degree the jury found in this case, are criminals, not advocates, hoodlums, not heroes. "Free speech" is a value that should lead us as a polity to the truth. "Free speech," in the hands of the Petitioners, is a tool of dissimulation.

ARGUMENT

VIOLENT CRIMINAL ACTIVITY IS NEITHER PROTECTED SPEECH NOR HEROIC POLITICAL DISSENT

Petitioners describe these proceedings as Dickensian,[3] but their briefs are actually more evocative of George Orwell. Petitioners appropriate the mantle of the Civil Rights Movement to cloak tactics never countenanced by that movement. They wear the democratic constitutionalist's robes before this Court, but only by way of camouflage. Their rhetoric is not their reality.

A. Violent Criminal Activity Is Not Protected Speech.

In Petitioners' Newspeak, acts of violence and physical blockades are merely "vigorous protests." (Scheidler Pet. for Cert. at 1.) What was experienced by patients at the clinics as assault and obstruction is resurrected on the tabula rasa of legal briefs as "sit-ins." (OR Pet. for Cert. at 3, 4 n.3.)[4] They insist that a factually specific, narrow ruling by the Seventh Circuit, dealing with a discrete injunction, has extravagant reach. They warn of "the threat posed by the decision below ... to labor and

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[3] Petitioners liken this proceeding to the Chancery suit, *Jarndyce v. Jarndyce*, described in Charles Dickens' *Bleak House*.

[4] Interestingly, OR concedes that the conduct it now casts as "demonstrations" and "sit-ins" by "political protestors" were in fact "obstructive." (*See* OR Pet. for Cert. at 5.)

political protestors." (Scheidler Rep. Br. at 10.) They insist, "There is no reason why, if the Seventh Circuit's latest interpretation of the Hobbs Act is correct, RICO actions based on predicate Hobbs Act offenses could not also be punished against social protestors of all stripes, including those demonstrating for civil rights, environmental causes, or animal rights." (Scheidler Pet. for Cert. at 23.) Conveniently, they forget that NOW never once attempted to sue true protesters, those who exercise their First Amendment right to pray, leaflet, shout, or even engage in name-calling.

Petitioners' revision of the history of clinic blockades and clinic violence should be noted for the Orwellian feat that it is: "the defense of the indefensible." George Orwell, "Politics and the English Language," in *The Orwell Reader* 363 (1984 ed.). In this rhetorical world, the Civil Rights sit-ins, the objective of which was to *secure* access to public accommodations on the same terms as white citizens, are analogized to the blockaders at the clinics. But the truth of the desegregation sit-ins cannot be revised by false analogy: the protestors wanted a place at the table, not to keep other patrons from theirs. The sit-in manual commanded: "Don't strike back, or curse if attacked ... Don't block entrances." *See* Howard Sitkoff, *The Struggle for Black Equality* 67 (1993 ed.).

This Court knows the difference between seeking access and blocking it, having upheld the right "in a peaceable and orderly manner to protest by silent and reproachful presence,[5] in a place where the protestant has

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[5] Or, it should be noted, to chant, speak, counsel or attempt to persuade, consistent with reasonable time, place and manner

every right to be," *Brown v. Louisiana*, 383 U.S. 131, 142 (1966), while allowing to stand the criminal-trespass convictions of 200 students who blocked access to the jail to protest the arrest of civil rights demonstrators. *Adderly v. Florida*, 389 U.S. 39 (1966). The tactics Petitioners seek to defend call to mind not the lunch counters of Greensboro, but George Wallace blocking the doors at Tuscaloosa.

The Respondents' construction of the Hobbs Act would not render the Reverend King a racketeer or transform Gandhi into an extortionist. Contrary to Petitioners' insinuations, it is not "social protest" that we punish when we punish violence. Social protest does not mangle bodies. Gandhi had no gunpowder. Dr. King did not block white citizens from exercising the franchise by burning the voting booth or forcing them to run a gauntlet of angry African-Americans hurling threats or fists at them. Fifty-lb. sticks of dynamite, galvanized nails, and anti-personnel backup bombs are not political tracts.

The rhetorical sleights-of-hand that characterize Petitioners' image-sculpting provide insight into why they chose to compare the violent persons in their ranks to those peaceful protestors who marched over Selma's Edmund Pettus Bridge. Operation Rescue is a two-faced Janus, woundedly protesting its moderation here while presenting quite another face to the troops. For public and judicial consumption, "blitzes" and blockades are reinvented as Clara Bartonesque "rescues," and angry haranguers of patients and clinic staff are "sidewalk counselors." *See* Abigail A. Fuller, "Conflict Resolution and Conservative

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constraints. Threats of bodily harm are not reasonable.

Ideology: The Use of Civil Disobedience by Operation Rescue," *available at* www.colorado.edu/conflict/. In Petitioners' briefs here, a clinic is a clinic. Among the troops, a clinic is "a 'death mill' (the word 'mill' connoting a factory where procedures are performed rotely) or an 'abortuary.'" *Id.* Pro-choice volunteers who assist patients in navigating the gauntlet at an Operation Rescue occupation are "deathscorts, a play on the word escort, which is used by prochoice people." *Id.*

In this Court, Petitioners are respectful and respectable citizens who would never use language worthy of Big Brother's "Two Minutes' Hate"[6] as they exhort their own to occupy the premises and obstruct access to medical procedures. When the public relations antennae are relaxed in their own circles, however, their words are less measured and their message delivered with a menace that is not always encrypted. When forming PLAN, Petitioner Scheidler vowed to stop abortion "by any means necessary" and proclaimed "a year of pain and fear" for anyone seeking or providing an abortion. *See* "NOW v. Scheidler Timeline: The complete story," *National NOW Times* (Fall 2002), *available at* www.findarticles.com. The man who described his brainchild as a "pro-life Mafia" in other fora professes astonishment at being sued under RICO in the judicial forum. *See id. See also* Frederick Clarkson, "Terror in the Name of the Lord," *Ms. Magazine* (July 2002), *at* www.msmagazine.com.

Petitioner Scheidler insists that he does not condone violence and that he supports robust speech. He has a strange notion of violence and a strange concept of the

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[6] *See* George Orwell, *1984* (1949, HBJ: New York).

contours of the First Amendment.

The motel marquee for a PLAN conference after a spate of bombing plots and clinic attacks blared "WELCOME PRO-LIFE ACTIVISTS–HAVE A BLAST," and some attendees wore firecrackers on their nametags. *Id.* A letter from clinic arsonist Curt Beseda was read to the crowd. The conference "epitomized the brazen yet banal nature of organized antiabortion extremism – a rah-rah atmosphere, like some perverse parody of a pep rally, in which threats of future violence were cloaked as free speech, and past criminal acts were celebrated as valid tools for intimidating fellow citizens." *Id.* The following year, a day after Petitioner Scheidler admitted that he was "casing the place," Summit Women's Health Clinic "protestors" invaded the clinic and expressed their dissent through serious vandalism. *Id.*

Scheidler's parsimoniously applied scruples about violence do not prevent him from visiting Michael Bray, who conspired to bomb over 10 clinics, and Curt Beseda who, in addition to his pyrotechnical prowess, had ties to a group who kidnaped a doctor who performed abortions (and his wife) and held them under death threats for eight days demanding that they sign a pledge to perform no abortions.[7] Stephen J. Hedges, David Bowermaster, and Susan Headden, "Abortion Rights Advocates Have

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[7] The FBI investigated this kidnaping because the death threats made during the abduction in order to secure the pledge violated the Hobbs Act. The kidnapers were members of the band of murderers known as the Army of God, was later convicted of torching two Florida clinics. Joni Scott, "From Hate Rhetoric to Hate Crime," *The Humanist* (Jan./Feb. 1999), *at* www.thehumanist.org/humanist/articles/scott.html.

Alleged a Conspiracy, but the Jury is Still Out," *U.S. News & World Rep.* (Nov. 14, 1994). He spoke frequently with John Brockhoeft, serial clinic arsonist. *Id.* Of his meetings with bombers, he shrugs, "Just because someone commits a crime doesn't mean they are a bad person." *Id.*

As one observer noted, "If Scheidler has argued against the use of violence, it has not always been clear from his writings." *Id.* Among the letters that he sent to his confederates: "Thanks so much for sending the photographs of our gang in front of the bombed-out abortuary – great scene. Appreciate your help. Keep up the good work." *Id.* He told another supporter by letter that a man who abducted a doctor who provided abortion care "has a lot to teach us." *Id.*

Petitioner Operation Rescue has from time to time made public assassination threats against a physician who provides abortion services. Dr. Warren M. Hern reported to the Department of Justice that Randall Terry, founder of OR, led a demonstration on clinic premises during which he prayed for Dr. Hern to be "executed." He repeated his prayerful threat over the radio three years later; two days after that broadcast, the doctor who replaced the assassinated Dr. Gunn of Pensacola was found murdered in Birmingham, with money in his pocket. *See* Dr. Warren M. Hern, Report to U.S. Department of Justice, "Anti-Abortion Activity at Boulder Abortion Clinic 1975-1995," *at* www.drhern.com/jdrpt195.htm.[8]

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[8] Dr. Hern also reported that Scheidler's scheduled appearance at the Boulder clinic was shortly preceded by a brick through the window and proceeded apace with a telephone harassment campaign that was later traced to the wife of the man who had invited Scheidler

In this Court, Petitioners liken themselves to the heroes of this nation's epic nonviolent struggle to end racial disenfranchisement, but elsewhere, the martial metaphor is everywhere. Petitioner Scheidler has made plain his distaste for peaceful protest and his yearning for jihad in other fora. "[W]e will win because we're on God's side. It's a holy war," he told a right-wing Illinois publication. Jill Stanek, "An Interview with Illinois pro-life leaders who make history," *Illinois Leader* (July 15, 2002), *at* www.illinoisleader.com.

As one scholar has noted, "In contradiction to Operation Rescue's prolife stance, much of the organization's language is militaristic." *See* Fuller, *supra*. OR, unlike protest movements that actually are committed to nonviolence, uses "language that evokes images of violence, including words that evoke a militaristic analogy" with the antiabortion movement. *Id.* For example, an OR chapter in Colorado terms its blockades "Minutemen Rescues," evoking the citizens' militia in the American Revolution. *Id.* Other OR literature exhorts, "We are among the front-line troops in the battle for life. Together we will win! We have an army of people. The battle is raging ... The Commander is calling most of us to the front lines." *Id.*

These words match the tactics of PLAN and OR conspirators in their virulence. Self-evidently they bear no

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to town. *Id.* As for OR in the Denver area, one police captain saw no dominant influence of peace when the group came to town. "This never took on the appearance of a peaceful demonstration. It certainly was not nonviolent. It's not peaceful when you rush a police line." *See* Fuller, *supra*.

resemblance to the words or deeds of the Reverend King. Nor are they consonant with any respect for or understanding of the nonviolence principle that underlies Gandhi's and Dr. King's concept of civil disobedience. The nonviolent activist is willing "to incur, but not in turn inflict, suffering," and he is assiduously trained in the use of nonviolent action and in the philosophy of nonviolence. *Id.* OR "trains" its "rescuers" the day of its arrival, and nonviolence is not "explained in any Operation Rescue literature, except in reference to the Bible allowing [violence] when man's laws conflict with God's laws." *Id.*

Those who "express" their protest of abortion with fists, projectiles, and bombs do not stand in any venerated First Amendment tradition. They are in fact criminals, despite Petitioners' apologia for them.

B. Violent Criminal Activity Is Not Heroic Political Dissent.

Apparently, in Petitioners' view, the purity of the criminal's commitment to his principles means that his deeds should go unpunished. Punishing crime regardless of the actor's motivations, Scheidler warns, would snare what popular understanding would brand as "politically correct" activists, too, such as civil rights protestors, environmentalists, and animal rights advocates. (Scheidler Pet. for Cert. at 23.) This contention is among the few unassailably straightforward statements in Petitioner Scheidler's brief.

To the extent that, as Scheidler speculates, PETA, the Sierra Club, or the NAACP acquire dynamite or bombs and plan to use them to demonstrate their disdain for

furriers, power plants, or bigots, they should be treated as criminals regardless of their views about the morality of animal vivisection, global ecology, or equal rights. Any deviation from the neutral enforcement of laws punishing terrorist acts because of sympathy with the actor's viewpoint does violence to the rule of law.

That very evenhandedness is a good thing on which the integrity of our legal system depends. The fact that we cannot elect to leave unpunished some criminals because we appreciate their sincerity while we would punish others appears to have eluded Petitioners. What is good for PETA is good for Operation Rescue, or, as the sponsor of the Hobbs Act put it, "Crime is crime, no matter who commits it." 91 Cong. Rec. at ¶ 11,912 (statement of Rep. Hobbs) (1945).

Petitioners' own view that they have a "moral exemption" from laws that bind the rest of us, that the First Amendment is tensile enough to stretch its protective fabric over their crimes, reflects the same moral smugness and certitude that those convicted of terrorism in connection with their antiabortion holy war demonstrate with such tragic consequences. A rather cavalier attitude toward the consequences for "the enemy" prevails.

Petitioners tell this Court that there were "*only four*" acts or threats of violence in this case. *(See* Scheidler Rep. Br. at 3 n.1 (emphasis in original); OR Pet. for Cert. at 4.) The only conscientious retort to such a contemptuous disregard for the effects of "only four" acts of violence on their victims is to remind Petitioners and the Court that convicted clinic bomber Eric Rudolph committed "only four" acts of violence, exploding "only four" bombs, but killing or injuring dozens, including *amica* Emily Lyons.

These "acts or threats of violence" are the type of conduct that the Hobbs Act was intended to deter and for which Respondents seek to hold Petitioners accountable.

Antiabortion terrorist Rudolph did indeed "HAVE A BLAST" as Petitioner Scheidler suggested. The Birmingham bombing for which he was sentenced to two consecutive life terms on Emily Lyons' birthday, April 11, 2005, capped his trilogy of terror directed against internationalism, reproductive health service providers, and lesbians. Here is a description of Rudolph's "only four acts or threats of violence":

- During the 1996 Olympics in Atlanta where an estimated 50-70,000 milled about, a caller dialed 911 from a pay phone and reported, "There's a bomb in Centennial Park. You have 30 minutes." Twenty minutes later, the military-style backpack placed under a park bench exploded. The blast, set by a self-proclaimed protector of children, injured 111 people and killed Alice Hawthorne, leaving her daughter motherless. *See* Add Seymour, Jr., "Bomber Sentencing Monday in Atlanta: Olympic blast victims will face Rudolph," Atlanta *Journal-Constitution* (Aug. 21, 2005) at 1D. Her husband celebrated what would have been his 18th wedding anniversary observing Rudolph's sentencing for the crime. "Rudolph Sentenced to Life in Atlanta Bombings," *Chicago Free Press* (Aug. 24, 2005), at 7.

- Rudolph's bomb at Atlanta's Sandy Springs Professional Building on January 16, 1997 used 3 1/2 pounds of 1 1/2" long flooring nails, 100' of

twisted galvanized wire, and dynamite. The Sandy Springs Professional Building housed the Northside Family Planning Clinic. Several people were injured, including police officers. *See* U.S. Department of Justice Press Release, "Eric Rudolph Charged In Olympic Park Bombing" (Oct. 14, 1998), *available at* www.usdoj.gov/opa/pr/1998/October/477crm.htm. The bomb that caused the injuries was an anti-personnel device, timed for a second explosion to harm the rescuers. *Id.* Rudolph was sentenced August 22, 2005.

- The Otherside Lounge, an Atlanta lesbian bar, was bombed February 21, 1997. That bomb used 6 ½ pounds of 2" long nails, twisted galvanized wire, and between 30 and 50 half-pound sticks of dynamite. *Id.* Rudolph was sentenced for the crime August 22, 2005.

- At approximately 7:30 a.m., on January 29, 1998, a bomb was detonated at the New Woman All Woman clinic in Birmingham, Alabama. This bomb, which contained five pounds of dynamite, and hundreds of nails, killed off-duty police officer Robert "Sande" Sanderson and maimed *amica* Emily Lyons. *See* "To Hell and Back, *supra*; Jay Reeves, "An unrepentant Rudolph gets life in prison for deadly bombing at abortion clinic," The Associated Press Online (July 18, 2005).

Rudolph clearly esteems himself a holy warrior, a good man who will be hailed as a hero by later

generations. He told the federal judge in Birmingham who sentenced him:

> I will be vindicated – my actions that overcast day in January 1998 will be vindicated. As I go to a prison cell for a lifetime I know that I have fought a good fight. I have finished my course. I have kept the faith.

"Olympic bomber gets two life sentences for attack," *Agence France Presse – English* (Jul. 18, 2005). Similarly, he wrote his mother:

> Perhaps I should have found a peaceful outlet for my opposition to the government in Washington: maybe I should have been a lawyer and fought [for] decency in the face of this rotten system; perhaps I could have taken up teaching and sought to inculcate a healthy outlook in a decidedly unhealthy society. But ... I resorted to force to have my voice heard. However wrongheaded my tactical decision to resort to violence may have been, morally speaking my actions were justified.

Blake Morrison, "Special report: Eric Rudolph writes home," *USA Today* (July 7, 2005) at 1A.

> Rudolph views himself as a holy warrior, a good

man done in by a corrupt system of justice,[9] rather than a terrorist. Petitioners likewise have recast themselves in this Court as peace-loving civil rights activists, rather than the racketeers a jury found them to be based on their "only four" acts or threats of violence. Like Rudolph, Petitioners had a choice: work within the system for change or engage in "acts or threats of violence." According to a federal jury, they chose the latter. It is entirely fair to treat them accordingly, no matter how morally justified they believe themselves to be.

CONCLUSION

There is no free speech right to do what Petitioners did. There is no free speech right to do what Eric Robert Rudolph did. There certainly is no excuse in morality. This Court should recognize the implications of Petitioners' argument that "only four" acts of violence – which could be Rudolph's four bombings – somehow are trivialities unworthy of a close examination by the Court. PLAN, Scheidler, and Operation Rescue do not want this

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[9] In another letter to his mother, Rudolph evinces an appreciation of Herman Melville but a void of self-awareness: "I just finished reading *Billy Budd* by Melville. It's a story about a good man sacrificed on the altar of military-legal expediency. It makes a powerful statement at the end about the relativity of history, and just who ends up being the good guy or bad guy depends on who gets to write the story." Morrison, *supra*. He questions the government's "moral authority to judge a man for murder," Morrison, *supra*, and sanctimoniously offered to "forgive" workers at clinics, workers like Emily Lyons whom he maimed, Sande Sanderson whom he killed. *See* Eric Robert Rudolph, "Statement of Eric Robert Rudolph," *reprinted in* The Birmingham *News* (Apr. 14, 2005) at 9A.

Court to peer under the "free speech" cloak they use to hide their naked aggression toward people seeking medical treatment and people providing it. But this Court must look with a discerning eye past the veil of obfuscation. This Court should make clear that, if anthrax is sent in the mail, the letter accompanying it is not mere speech just because it expresses an opinion. This principle should be no less true of bombs, blockades, and blitzes.

Respectfully submitted,

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